

AMENDED IN ASSEMBLY SEPTEMBER 5, 1997

AMENDED IN ASSEMBLY JULY 2, 1997

AMENDED IN SENATE MAY 5, 1997

AMENDED IN SENATE APRIL 8, 1997

SENATE BILL

No. 825

Introduced by Senator Greene

February 26, 1997

An act to amend Sections 7000.5, 7011, 7155.5, 7156, 7157, and 7159 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 825, as amended, Greene. Contractors' State License Board: sunset date.

(1) The Contractors' State License Law provides for the creation of the Contractors' State License Board in the Department of Consumer Affairs. The board is charged with administering the provisions that govern persons licensed under the Contractors' State License Law. The board is also required to appoint a registrar of contractors with specified duties. The provisions authorizing the existence of the board and the appointment of the registrar will become inoperative on July 1, 1998, and will be repealed on January 1, 1999.

This bill would extend the inoperative dates to July 1, ~~1999~~ 2000, and the repeal dates to January 1, ~~2000~~ 2001.

(2) Existing law requires the Joint Legislative Sunset Review Committee to perform various functions and duties in

evaluating and determining whether a board or regulatory program has demonstrated a public need for the board's or program's continued existence, and to report its findings and recommendations to the Department of Consumer Affairs for review.

This bill, until July 1, 2000, would provide that the review of the Contractors' State License Board by the department shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

(3) The bill would require the board to report to the Legislature and the Department of Consumer Affairs on whether revising specialty licensing contractor classifications is appropriate.

(4) The bill would also make technical and clarifying changes.

(5) The bill would provide that it shall not become operative unless SB 857 of the 1997–98 Regular Session is also enacted and becomes operative.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7000.5 of the Business and
2 Professions Code is amended to read:

3 7000.5. (a) There is in the Department of Consumer
4 Affairs a Contractors' State License Board, which consists
5 of 13 members.

6 (b) The repeal of this section renders the board
7 subject to the review required by Division 1.2
8 (commencing with Section 473). However, the review of
9 this board by the department shall be limited to only
10 those unresolved issues identified by the Joint Legislative
11 Sunset Review Committee.

12 (c) This section shall become inoperative on July 1,
13 ~~1999~~ 2000, and, as of January 1, ~~2000~~ 2001, is repealed,
14 unless a later enacted statute, which becomes effective on
15 or before January 1, ~~2000~~ 2001, deletes or extends the
16 dates on which it becomes inoperative and is repealed.



1 SEC. 2. Section 7011 of the Business and Professions
2 Code is amended to read:

3 7011. The board by and with the approval of the
4 director shall appoint a registrar of contractors and fix his
5 or her compensation.

6 The registrar shall be the executive officer and
7 secretary of the board and shall carry out all of the
8 administrative duties as provided in this chapter and as
9 delegated to him or her by the board.

10 For the purpose of administration of this chapter, there
11 may be appointed a deputy registrar, a chief reviewing
12 and hearing officer and, subject to Section 159.5, other
13 assistants and subordinates as may be necessary.

14 Appointments shall be made in accordance with the
15 provisions of civil service laws.

16 This section shall become inoperative on July 1, ~~1999~~
17 ~~2000~~, and, as of January 1, ~~2000~~ 2001, is repealed, unless a
18 later enacted statute, which becomes effective on or
19 before January 1, ~~2000~~ 2001, deletes or extends the dates
20 on which it becomes inoperative and is repealed.

21 SEC. 3. Section 7155.5 of the Business and Professions
22 Code is amended to read:

23 7155.5. Violations of any provisions of this chapter by
24 a home improvement salesperson, likewise constitutes a
25 cause for disciplinary action against the contractor,
26 whether or not he or she had knowledge of or
27 participated in the act or omission constituting violations
28 of this chapter.

29 SEC. 4. Section 7156 of the Business and Professions
30 Code is amended to read:

31 7156. It shall be a misdemeanor and a cause for
32 disciplinary action to commit any of the following acts:

33 (a) For any salesperson to fail to account for or to remit
34 to his or her employing contractor any payment received
35 in connection with any home improvement transaction
36 or any other transaction involving a work of
37 improvement.

38 (b) For any person to use a contract form in
39 connection with any home improvement transaction or
40 any other transaction involving a work of improvement

1 if the form fails to disclose the name of the contractor
2 principal by whom he or she is employed.

3 SEC. 5. Section 7157 of the Business and Professions
4 Code is amended to read:

5 7157. (a) Except as otherwise provided in
6 subdivision (b), as a part of or in connection with the
7 inducement to enter into any home improvement
8 contract or other contract, which may be performed by
9 a contractor, no person may promise or offer to pay,
10 credit, or allow to any owner, compensation or reward for
11 the procurement or placing of home improvement
12 business with others.

13 (b) A contractor or his or her agent or salesperson may
14 give tangible items to prospective customers for
15 advertising or sales promotion purposes where the gift is
16 not conditioned upon obtaining a contract for home
17 improvement work if the gift does not exceed a value of
18 five dollars (\$5) and only one such gift is given in
19 connection with any one transaction.

20 (c) No salesperson or contractor's agent may accept
21 any compensation of any kind, for or on account of a home
22 improvement transaction, or any other transaction
23 involving a work of improvement, from any person other
24 than the contractor whom he or she represents with
25 respect to the transaction, nor shall the salesperson or
26 agent make any payment to any person other than his or
27 her employer on account of the sales transaction.

28 (d) No contractor shall pay, credit, or allow any
29 consideration or compensation of any kind to any other
30 contractor or salesperson other than a licensee for or on
31 account of the performance of any work of improvement
32 or services, including, but not limited to, home
33 improvement work or services, except: (1) where the
34 person to or from whom the consideration is to be paid is
35 not subject to or is exempted from the licensing
36 requirements of this chapter, or (2) where the
37 transaction is not subject to the requirements of this
38 chapter.

39 As used in this section "owners" shall also mean
40 "tenant."

Commission of any act prohibited by this section is a misdemeanor and constitutes a cause for disciplinary action.

SEC. 6. Section 7159 of the Business and Professions Code is amended to read:

7159. This section applies only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500).

Every home improvement contract and every contract, the primary purpose of which is the construction of a swimming pool, is subject to this section. Every contract and any changes in the contract subject to this section shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain all of the following:

(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.

(b) The approximate dates when the work will begin and on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size, dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor

1 by the owner or the tenant before the commencement of
2 work, the downpayment may not exceed two hundred
3 dollars (\$200) or 2 percent of the contract price for
4 swimming pools, or one thousand dollars (\$1,000) or 10
5 percent of the contract price for other home
6 improvements, excluding finance charges, whichever is
7 less.

8 (e) A schedule of payments showing the amount of
9 each payment as a sum in dollars and cents. In no event
10 may the payment schedule provide for the contractor to
11 receive, nor may the contractor actually receive,
12 payments in excess of 100 percent of the value of the work
13 performed on the project at any time, excluding finance
14 charges, except that the contractor may receive an initial
15 downpayment authorized by subdivision (d). With
16 respect to a swimming pool contract, the final payment
17 may be made at the completion of the final plastering
18 phase of construction, provided that any installation or
19 construction of equipment, decking, or fencing required
20 by the contract is also completed. A failure by the
21 contractor without lawful excuse to substantially
22 commence work within 20 days of the approximate date
23 specified in the contract when work will begin shall
24 postpone the next succeeding payment to the contractor
25 for that period of time equivalent to the time between
26 when substantial commencement was to have occurred
27 and when it did occur. The schedule of payments shall be
28 stated in dollars and cents, and shall be specifically
29 referenced to the amount of work or services to be
30 performed and to any materials and equipment to be
31 supplied. With respect to a contract that provides for a
32 schedule of monthly payments to be made by the owner
33 or tenant and for a schedule of payments to be disbursed
34 to the contractor by a person or entity to whom the
35 contractor intends to assign the right to receive the
36 owner's or tenant's monthly payments, the payments
37 referred to in this subdivision mean the payments to be
38 disbursed by the assignee and not those payments to be
39 made by the owner or tenant.



1 (f) A statement that, upon satisfactory payment being
2 made for any portion of the work performed, the
3 contractor shall, prior to any further payment being
4 made, furnish to the person contracting for the home
5 improvement or swimming pool a full and unconditional
6 release from any claim or mechanic's lien pursuant to
7 Section 3114 of the Civil Code for that portion of the work
8 for which payment has been made.

9 (g) The requirements set forth in subdivisions (d),
10 (e), and (f) do not apply when the contract provides for
11 the contractor to furnish a performance and payment
12 bond, lien and completion bond, bond equivalent, or joint
13 control approved by the registrar covering full
14 performance and completion of the contract and the
15 bonds or joint control is or are furnished by the
16 contractor, or when the parties agree for full payment to
17 be made upon or for a schedule of payments to
18 commence after satisfactory completion of the project.
19 The contract shall contain, in close proximity to the
20 signatures of the owner and contractor, a notice in at least
21 10-point type stating that the owner or tenant has the
22 right to require the contractor to have a performance and
23 payment bond.

24 (h) No extra or change-order work may be required to
25 be performed without prior written authorization of the
26 person contracting for the construction of the home
27 improvement or swimming pool. No change-order is
28 enforceable against the person contracting for home
29 improvement work or swimming pool construction
30 unless it clearly sets forth the scope of work encompassed
31 by the change-order and the price to be charged for the
32 changes. Any change-order forms for changes or extra
33 work shall be incorporated in, and become a part of, the
34 contract. Failure to comply with the requirements of this
35 subdivision does not preclude the recovery of
36 compensation for work performed based upon
37 quasi-contract, quantum meruit, restitution, or other
38 similar legal or equitable remedies designed to prevent
39 unjust enrichment.

1 (i) If the contract provides for a payment of a
2 salesperson's commission out of the contract price, that
3 payment shall be made on a pro rata basis in proportion
4 to the schedule of payments made to the contractor by
5 the disbursing party in accordance with subdivision (e).

6 (j) The language of the notice required pursuant to
7 Section 7018.5.

8 (k) What constitutes substantial commencement of
9 work pursuant to the contract.

10 (l) A notice that failure by the contractor without
11 lawful excuse to substantially commence work within 20
12 days from the approximate date specified in the contract
13 when work will begin is a violation of the Contractors'
14 State License Law.

15 (m) If the contract provides for a contractor to furnish
16 joint control, the contractor shall not have any financial
17 or other interest in the joint control.

18 A failure by the contractor without lawful excuse to
19 substantially commence work within 20 days from the
20 approximate date specified in the contract when work
21 will begin is a violation of this section.

22 This section does not prohibit the parties to a home
23 improvement contract from agreeing to a contract or
24 account subject to Chapter 1 (commencing with Section
25 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

26 The writing may also contain other matters agreed to
27 by the parties to the contract.

28 The writing shall be legible and shall be in a form that
29 clearly describes any other document that is to be
30 incorporated into the contract. Before any work is done,
31 the owner shall be furnished a copy of the written
32 agreement, signed by the contractor.

33 For purposes of this section, the board shall, by
34 regulation, determine what constitutes "without lawful
35 excuse."

36 The provisions of this section are not exclusive and do
37 not relieve the contractor or any contract subject to it
38 from compliance with all other applicable provisions of
39 law.

1 A violation of this section by a licensee, or a person
2 subject to be licensed, under this chapter, or by his or her
3 agent or salesperson, is a misdemeanor punishable by a
4 fine of not less than one hundred dollars (\$100) nor more
5 than five thousand dollars (\$5,000), or by imprisonment
6 in the county jail not exceeding one year, or by both that
7 fine and imprisonment.

8 (n) Any person who violates this section as part of a
9 plan or scheme to defraud an owner of a residential or
10 nonresidential structure, including a mobilehome or
11 manufactured home, in connection with the offer or
12 performance of repairs to the structure for damage
13 caused by a natural disaster, shall be ordered by the court
14 to make full restitution to the victim based on the person's
15 ability to pay, as defined in subdivision (e) of Section
16 1203.1b of the Penal Code. In addition to full restitution,
17 and imprisonment authorized by this section, the court
18 may impose a fine of not less than five hundred dollars
19 (\$500) nor more than twenty-five thousand dollars
20 (\$25,000), based upon the defendant's ability to pay. This
21 subdivision applies to natural disasters for which a state
22 of emergency is proclaimed by the Governor pursuant to
23 Section 8625 of the Government Code or for which an
24 emergency or major disaster is declared by the President
25 of the United States.

26 SEC. 7. The Contractors' State License Board shall
27 report to the Legislature and the Department of
28 Consumer Affairs by October 1, 1998, on which specialty
29 licensing contractor classifications, such as asbestos
30 contractors or contractors involved in the removal or
31 remediation of hazardous substances, are appropriate for
32 consolidation, redefinition, or elimination. The board
33 shall also report on whether a separate classification or
34 certification of home improvement contractors is
35 appropriate.

36 SEC. 8. This act shall not become operative unless
37 Senate Bill 857 of the 1997-98 Regular Session is also
38 enacted and becomes operative.

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